Joel R. Weiner (SBN 139446)
joel.weiner@kattenlaw.com
Gail Migdal Title (SBN 49023)
gail.title@kattenlaw.com
Christopher E. Carter (SBN 274115)
christopher.carter@kattenlaw.com
KATTEN MUCHIN ROSENMAN LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067-3012
Telephone: 310.788.4400
Facsimile: 310.788.4471

Attorneys for Defendants NBCUNIVERSAL MEDIA, LLC, OPEN 4 BUSINESS PRODUCTIONS, LLC, and AMERICAN WORK, INC.

Katten
Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067-3012
310.788.4400 tel 310.788.4471 fax

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DUCKHOLE, INC., an Arizona corporation,

Plaintiff,

vs.

NBCUNIVERSAL MEDIA, LLC, a Delaware limited liability company; OPEN 4 BUSINESS PRODUCTIONS, LLC, a Delaware limited liability company; UNIVERSAL TELEVISION NETWORKS, LLC, a California limited liability company, AMERICAN WORK, INC., a New York corporation; and DOES 1-10,

Defendants.

CASE NO.: CV 12-10077 JAK (CWX)

HON. JOHN A. KRONSTADT

DEFENDANTS NBCUNIVERSAL MEDIA, LLC, OPEN 4 BUSINESS PRODUCTIONS, LLC AND AMERICAN WORK, INC.'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT; DECLARATION OF JOEL R. WEINER IN SUPPORT THEREOF

Date: July 15, 2013
Time: 8:30 a.m.
Place: Courtroom 750 (Roybal)

Complaint Filed: November 26, 2012
FAC Filed: January 14, 2013

Katten
KattenMuchinRosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067-3012
310.788.4400 tel 310.788.4471 fax

Defendants NBCUniversal Media, LLC, Open 4 Business Productions, LLC and American Work, Inc. (collectively, "Defendants") request that the Court take judicial notice of the following facts pursuant to Federal Rule of Evidence 201. Each of these facts is generally known within the jurisdiction of the Court and/or is capable of accurate and ready determination from the works attached hereto, the accuracy of which cannot be reasonably questioned:

THE WORKS AT ISSUE[1]

1. The content of *Animal Practice*. DVDs of the 7 aired episodes are being lodged with the Court. (Notice of Lodging, ¶ 1; Declaration of Joel R. Weiner ("Weiner Dec.", ¶ 3.))
2. The content of Plaintiff's "treatment" entitled *PETS*. A true and correct copy of the "treatment" is attached to the appended Declaration of Joel R. Weiner as Exhibit A. (Weiner Dec., ¶ 4, Ex. A.)

THE DATE OF PLAINTIFF'S COPYRIGHT REGISTRATION

3. That Plaintiff registered the copyright in *PETS* with the U.S. Copyright Office on October 7, 2012. A copy of the United States Copyright Office's public catalog entry for *PETS*, copyright registration number TXu001828556, is attached to the appended Declaration of Joel R. Weiner as Exhibit B. (Weiner Dec., ¶ 5, Ex. B.)

---

[1] As Plaintiff's treatment and Defendants' allegedly infringing television series are referenced in the First Amended Complaint and form the basis of Plaintiff's claim of copyright infringement, the works are properly before the court under the doctrine of incorporation and are considered to be within the scope of the pleadings for ruling on a 12(b)(6) motion. Zella v. E.W. Scripps Co., 529 F. Supp. 2d 1124, 1139 (C.D. Cal. 2007) (Collins, J.); Knievel v. ESPN, 393 F.3d 1068, 1076-77 (9th Cir. 2005); Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994). However, out of an abundance of caution, Defendants also request judicial notice of the content of the works. Fed. R. Evid. 201.

Katten
Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067-3012
310.788.4400 tel 310.788.4471 fax

LEGAL AUTHORITY

Federal Rule of Evidence 201(b) provides that a judicially noticed fact must be "one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Judicial notice is mandatory if it is requested by a party and the court is supplied with the necessary information. Fed. R. Evid. 201(c).

Each of the facts for which Defendants request judicial notice meets one or both of the standards for judicial notice, either one of which would be sufficient.

First, the Court should take judicial notice of Plaintiff's *PETS* treatment and Defendants' show *Animal Practice*, since their contents are alleged in the FAC and their authenticity is not in question. See Capcom Co., Ltd. v. MKR Group, Inc., No. C 08-0904, 2008 WL 4661479, at *3 (N.D. Cal. Oct. 20, 2008) (Plaintiff's work and Defendants' allegedly infringing work properly before the court pursuant to Defendants' request for judicial notice); Scott v. Meyer, 09-cv-6076 ODW (RZx) (Doc. No. 20, at p. 4 of 11) (C.D. Cal. November 24, 2009) (same); Zella, 529 F. Supp. 2d at 1129; Wild v. NBC Universal, Inc., 788 F. Supp. 2d 1083, 1090 n. 1 (C.D. Cal. 2011) (Feess, J.), aff'd 2013 WL 750655 (9th Cir. Feb. 23, 2013) (taking "judicial notice of Season 4 of [the television series] *Heroes* and the three part books that make up [the plaintiff's work] *Carnival of Souls*," and dismissing the case based on a comparison of the comic book and television series).

Second, the Court should take judicial notice of Plaintiff's intellectual property registration, and in particular, the date of the registration. Such registrations, like other governmental agency filings, are particularly appropriate for judicial notice since they are not subject to reasonable dispute and are capable of accurate and ready determination within the meaning of Rule 201(b)(2). Accordingly, courts regularly take judicial notice of copyright registrations. See, e.g., Warren v. Fox Family Worldwide, Inc., 171 F. Supp. 2d 1057, 1062 (C.D. Cal. 2001) aff'd, 328 F.3d 1136

Katten
KattenMuchinRosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067-3012
310.788.4400 tel 310.788.4471 fax

(9th Cir. 2003); Oroamerica Inc. v. D & W Jewelry Co., Inc., 2001 WL 537780, * 1, n. 4 (9th Cir. May 14, 2001) (Unpub.Disp.) (granting a request that the court take judicial notice of a supplemental copyright registration certificate); Carlsbad v. Shah, 850 F. Supp. 2d 1087, 1100, n.2 (S.D. Cal. Feb. 9, 2012) (taking judicial notice of copyright registered with United States Copyright Office).

Third, the Court should take judicial notice of types and elements of works that are common and prevalent in the jurisdiction of the Court, such as the common elements of veterinary hospitals and sitcoms discussed in the Motion. See, e.g., Zella, 529 F. Supp. 2d at 1129 (judicial notice that a host, guest celebrities, interviews and cooking segments are elements of a television show that are common and prevalent in public works); Walker v. Time Life Films, Inc., 615 F. Supp. 430, 438 (S.D.N.Y. 1985) (judicial notice that "members of the New York Police Department are often portrayed as Irish, smokers, drinkers, and third or fourth generation police officers"); Goldberg v. Cablevision Sys. Corp., 261 F.3d 318, 328 (2d Cir. 2001) (judicial notice of the common practice for educational and ideological programs aired on television and radio to conclude with an offer of or directions for obtaining a transcript or duplicate tape of the program); Willis v. Home Box Office, 2001 WL 1352916, at *2 (S.D.N.Y. Nov. 2, 2001) ("It does not strain the concept of judicial notice to observe that books, movies and television series are full of such unethical men and women in a variety of businesses").

Since every item that is the subject of the instant Request for Judicial Notice is either generally known within the jurisdiction or "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned" under Rule 201(b), the Court should grant Defendants' Request for Judicial Notice in its entirety.

Dated: April 17, 2013

KATTEN MUCHIN ROSENMAN LLP
Joel R. Weiner
Gail Migdal Title
Christopher E. Carter

By: /s/ Joel R. Weiner
Joel R. Weiner
Attorneys for Defendants NBCUNIVERSAL MEDIA, LLC, OPEN 4 BUSINESS PRODUCTIONS, LLC, and AMERICAN WORK, INC.

Katten
KattenMuchinRosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067-3012
310.788.4400 tel 310.788.4471 fax

Katten
Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067-3012
310.788.4400 tel 310.788.4471 fax

DECLARATION OF JOEL R. WEINER

I, Joel R. Weiner, hereby declare as follows:

1. I am an attorney duly licensed to practice law before all courts in the State of California. I am a partner at the firm Katten Muchin Rosenman LLP, counsel of record for Defendants NBCUniversal Media, LLC, Open 4 Business Productions, LLC and American Work, Inc. (collectively, "Defendants") in this case. The matters referred to in this declaration are based on my personal knowledge and belief, and if called as a witness, I could and would competently testify thereto under oath. I submit this declaration in support of Defendants' Motion to Dismiss Plaintiff's First Amended Complaint ("Motion").

THE WORKS AT ISSUE

2. I have received and viewed DVDs containing all episodes of *Animal Practice* that aired on the NBC television network. I obtained these DVDs from NBCUniversal Media, LLC. Attached, collectively, to the concurrently filed Notice of Lodging as Exhibit 1 are true and correct copies of those DVDs.

3. Attached hereto as Exhibit A is a true and correct certified copy of the Plaintiff's "treatment" entitled *PETS*, copyright registration number TXu001828556, obtained from the United States Copyright Office.

THE DATE OF PLAINTIFF'S COPYRIGHT REGISTRATION

4. On or about April 16, 2013, I searched the online records of the United Stated States Copyright Office located at: http://www.copyright.gov/records/. I searched for Plaintiff's "treatment" entitled *PETS* using the copyright registration number TXu001828556. According to the online records, Plaintiff's copyright was registered on October 7, 2012. A true and correct copy of the United States Copyright Office's online record for *PETS*, copyright registration number TXu001828556, is attached hereto as Exhibit B.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 17, 2013 at Los Angeles, CA.

/s/ Joel R. Weiner
Joel R. Weiner

Katten
KattenMuchinRosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067-3012
310.788.4400 tel 310.788.4471 fax